

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITA No.333 of 2006
Date of decision: 5.9.2006

R.P.Vashisht

...Appellant

v.

DCIT, Circle 1(1), Chandigarh

...
Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Deepak Sibal, Advocate, for the appellant.

JUDGMENT:

The assessee has preferred this appeal proposing following substantial questions of law:-

- “i) Whether the order passed by the learned Tribunal is perverse being self-contradictory?
- ii) Whether liability under the Income Tax Act, 1961 can be foisted on an assessee when the issue regarding the receipt of money is yet to be adjudicated upon by competent court where that issue is pending?
- Iii) Whether the Income tax authorities should have awaited the final adjudication on the issue regarding the alleged receipt of money, the amount of which is being sought to be added to the income of the assessee?
- iv) Whether the addition to the assessee's income can be made on the basis of presumptions, conjectures and surmises?

- v) Whether corroboration of funds leading to the addition of an amount to the assessee's income is put on the basis of certain entries in a diary of a third person who has specifically denied on oath giving the payment?
- vi) Whether the learned Tribunal erred by deciding the issue without referring to the material on record?"

The assessee was working as a Stenographer in Chandigarh Administration. A search was conducted at the premises of the then Chief Engineer, Mr. K.K.Jerath. The assessee was working as Personal Assistant to the said Chief Engineer. His premises were also searched. Certain loose slips were found during search relating to expenditure incurred by him for renovation of his ancestral house. His explanation was that the slips represented estimates likely to be incurred. He did not carry out renovation for want of funds but constructed a retaining wall. He further explained that out of expenditure of Rs.30,608/-, a sum of Rs.17000/- was received from his son who was running a cloth shop at Baddi and a sum of Rs.13,608/- was received out of sale proceeds of agricultural produce and trees. He owned 33 kanals of agricultural land in District Hamirpur (HP). The assessing officer made addition of Rs.95,050/-, taking into account payments made by one Suresh Sharma, Liaison agent for the companies supplying electricity goods to Chandigarh Administration, from where a daily cashbook showing payments to the appellant-assessee datewise, was found.

On appeal, the Commissioner of Income Tax (Appeals) sustained the addition of Rs.79325/- but gave a relief of Rs.15,675/-.

The Tribunal upheld the view taken by the CIT (A) with the following observations:-

“7.....In this case, diary of Shri Suresh Sharma was found indicating payments of illegal gratification to the assessee. The question for our consideration is as to whether on the basis of the documents found at the time of search and the diary found with Shri Suresh Sharma

could be the basis for making the addition in the hands of the assessee on account of illegal gratification. The learned counsel has filed affidavit of the assessee in support of the claim that no criminal charges have so far been framed against the assessee and that the assessee had been reinstated in the absence of any evidence against him. The assessee has thereafter retired from services. In our considered view, the addition of Rs.79,325/- made by the Assessing Officer is based on loose papers found at the premises of the assessee coupled with the entries in the diary of Shri Suresh Sharma. The diary of Shri Suresh Sharma indicates various payments to have been made to the assessee. Though, no addition is justified on the basis of mere writings on the loose papers, yet in this case, expenditure recorded on the loose papers found at the time of search, is further corroborated by the entries made in the diary of Shri Suresh Sharma. Shri Jagdish Mitter, S.E., has admitted the entries in the diary of Shri Suresh Sharma relating to him as correct. The mere fact that there is no progress in the criminal proceedings against the assessee, does not disprove the correctness of the entries made in the diary of Shri Suresh Sharma. The diary was found in the course of the search and it cannot be presumed that Shri Suresh Sharma would have recorded the payments in the name of the assessee for no rhyme or reason. Since the diary was found in the course of search, the entries made in such diary are presumed to be correct unless otherwise proved. The assessee has simply denied the receipt of the amounts indicated in the diary. Whereas in the criminal case, a strong burden is to be discharged by the prosecution to establish the guilt of the assessee, in the Income-tax proceedings the addition could be justified on the basis of entries of third party coupled with the recording of the detailed expenditure

on the papers found in the course of search. Taking the totality of the facts and circumstances of this case into consideration, we are of the view that the Assessing Officer was justified to make the addition on account of unexplained investment in the renovation of house property which has been presumed to have been made out of the illegal gratification. Whether the illegal gratification was received by the assessee or not, may have to be decided in criminal proceedings. For the purpose of Income tax proceedings, the material, in our view, is sufficient to fasten the tax liabilities upon the assessee.”

Only contention raised by the learned counsel for the appellant is that criminal proceedings in a corruption case are pending and the decision taken by the authorities, of addition to the income of the appellant may be in conflict with the decision taken in criminal case.

We do not find any merit in this submission.

Scope of proceedings in a criminal case is different than scope of proceedings in an income tax assessment. A criminal charge is required to be proved beyond reasonable doubt, while assessment of income tax is on the basis of preponderance of probabilities on the basis of evidence on record. Order passed in assessment proceedings will not be binding in criminal court so as to prejudice the trial against the petitioner. Reference may be made to certain decisions on the point.

In **K.G.Premshankar v. Inspector of Police and another**, AIR 2002 SC 3372, the question was about relevance of judgment of civil court in a criminal case and vice versa. It was observed:-

“30. What emerges from the aforesaid discussion is – (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act: (2) in civil suits between the same parties, principle of res judicata may apply: (3) in a criminal case, Section 300, Cr.PC makes provision that once a person is

convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied: (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil Court would be relevant if conditions of any of the Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.”

In **Depot Manager, Andhra Pradesh State Road Transport Corporation v. Mohd. Yousuf Miya etc**, AIR 1997 SC 2232, the question for consideration was whether departmental disciplinary proceedings and criminal proceedings could go on simultaneously. In the said judgment, the Hon'ble Supreme Court referred to the earlier law on the point, particularly in **State of Rajasthan v. B.K.Meena**, 1996 AIR SCW 4160. It was observed :-

“6.....One of the contending consideration is that the disciplinary enquiry cannot be and should not be delayed unduly. So far as criminal cases are concerned, it is well-known that they drag on endlessly where high officials or persons holding high public officers are involved. They get bogged down on one or the other ground. They hardly even reach a prompt conclusion. That is the reality in spite of repeated advise and admonitions, from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good Government demand that these proceedings are concluded expeditiously. It must be remembered that these proceedings are concluded expeditiously. It must be remembered that undesirable elements are thrown out and any charge of misdemeanour is enquired into

promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be indicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that person accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above.”

There is yet another reason. The approach and the objective in the criminal proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be whereas in the criminal proceedings, the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of

enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course not a considered decision. Even if stayed at once stage, the decision may require reconsideration if the criminal case gets unduly delayed.”

Thereafter, it was observed:-

“We are in respectful agreement with the above view. The purpose of departmental enquiry and of prosecution are two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offender owes to the society or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions

of the Evidence Act. Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. The enquiry in the departmental proceedings relates to the conduct of the delinquent officer and proof in that behalf is not as high as in an offence in criminal charge. It is seen that invariably the departmental enquiry has to be conducted expeditiously so as to effectuate efficiency in public administration and the criminal trial will take its own course. The nature of evidence in criminal trial is entirely different from the departmental proceedings. In the former, prosecution is to prove its case beyond reasonable doubt on the touchstone of human conduct. The standard of proof in the departmental proceedings is not the same as of the criminal trial. The evidence also is different from the standard point of Evidence Act. The evidence required in the departmental enquiry is not regulated by Evidence Act. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances...”

As to the nature of income tax proceedings, matter has been gone into in several decisions. Referring to the nature of assessment proceedings under the Income Tax Act, 1961, it was observed in **S.S.Gadgil v. Messrs. Lal and Co.**, AIR 1965 SC 171:-

“9. A proceeding for assessment is not a suit for adjudication of a civil dispute. That an income-tax

proceeding is in the nature of a judicial proceeding between contesting parties is a matter which is not capable of even a plausible argument. The Income tax authorities who have power to assess and recover tax are not acting as judges deciding a litigation between the citizen and the State: they are administrative authorities whose proceedings are regulated by statute, but whose function is to estimate the income of the tax payer and to assess him to tax on the basis of that estimate. Tax legislation necessitates the setting up of machinery to ascertain the taxable income, and to assess tax on the income, but that does not impress the proceeding with the character of an action between the citizen and the State: Commissioner of Inland Revenue v. Sneath, (1932) 17 Tax Cas 149 at p.164 and Shell Co. of Australia Limited v. Federal Commissioner of Taxation, 1931 AC 275.”

In view of above, the appellant has not been able to point out any infirmity in the order passed by the Tribunal. View taken by the Tribunal is a possible one, which is based on appreciation of evidence.

Accordingly, no substantial question of law arises.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

September 5, 2006
'gs'

(Rajesh Bindal)
Judge